

REMARKS

Favorable reconsideration and allowance of this application are requested.

By way of the amendment instructions above, the claims have been revised as to address the Examiner's objections and rejections advanced under 35 USC §112, second paragraph. Withdrawal of the rejection advanced under 35 USC §112 is therefore in order.

Independent claims 1 and 11 have been revised so as to emphasize that surface abrading is accomplished by directing a dry grit against the surface of the linear uncoated rebar with sufficient abrasive force to remove surface debris and/or oxidation therefrom and to provide a desired anchor profile to improve mechanical adherence of the coating layer of polymeric material. Support for such revisions may be found in the originally filed specification at page 5, lines 18-25.

Independent claim 21 has been amended so as to include therein the substance of claim 23 against which no art-based rejection was advanced. Thus, independent claims 21 and the claims dependent therefrom should be in condition for prompt allowance. Claims 23 and 25 have thus been canceled as redundant.

Independent claim 31 has been amended so as to include therein the substance of claim 33 against which no art-based rejection was advanced. Thus, independent claim 31 and the claims dependent therefrom should be in condition for prompt allowance. Claim 33 has been canceled as redundant.

Claims 40-44 are new and are directed toward the "wet-sponge" defect detection method and apparatus recited generally by prior claims 29 and 39 which were indicated to be allowable. As such, new claims 40-44 are likewise submitted to be allowable.

I. Response to Double Patenting Rejection

Claims 1-28, 31-32 and 36-38 attracted a rejection based on the judicially created doctrine of "obviousness-type" double patenting based on claims 1-16, 22 and

23 of parent USP 6,691,414 ("the '414 patent"). In response, applicant is enclosing herewith a Terminal Disclaimer which disclaims that portion of any patent issuing hereon which may extend beyond the expiration date of any patent issuing on the '414 patent. Additionally, the Terminal Disclaimer filed herewith also includes a provision that the patent issued hereon shall be enforceable only for and during such period that legal title thereto is the same as the legal title to the '414 patent.

While applicant does not concur with the Examiner's position that the improvement sought to be patented herein is merely a matter of obvious choice or design as compared to the invention claimed in the '414 patent, applicant wishes to point out that, in situations such as this, the issue is not one of "obviousness", but rather one of "identity of invention." *In re Vogel*, 164 USPQ 619 (CCPA 1970), *In re Kaplan*, 229 USPQ 678 (Fed. Cir. 1986). The Court in *Vogel* set forth the test for identity of invention as whether the claims of one case could be literally infringed without literally infringing the claims of the other. It is quite apparent that one of the claims of one of the '414 patent and the claim of the present application could be infringed literally without infringing literally the claims of the other. Hence, there is no "identity of invention" so that the Terminal disclaimer enclosed herewith should, in any event, resolve the asserted issue of "double patenting".

II. Response to Art-Based Rejections

As noted previously, independent claims 21 and 31 have been amended so as to include subject matter of claims not subject to any art-based rejection. As such, independent claims 21 and 31, and all claims depending therefrom, are suggested to be allowable over the art of record.

Independent claims 1 and 11 have been revised so as to emphasize that surface abrading is accomplished by directing a dry grit against the surface of the linear uncoated rebar with sufficient abrasive force to remove surface debris and/or oxidation therefrom and to provide a desired anchor profile to improve mechanical adherence of the coating layer of polymeric material. None of the applied references of record

disclose or suggest such subject matter. As such, allowance of claims 1 and 11, and the claims dependent therefrom is believed to be in order.

III. Conclusion

Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicants suggest that this application is in condition for allowance and official notice to that effect is solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Bryan H. Davidson
Reg. No. 30,251

BHD:fmh
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100